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Federal Communications Commission

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	MM Docket No. 96-169
)	
Chester Broadcasting Company, Inc.)	File No. BR-950726YG
)	
For Renewal of License)	
for Station WGCD(AM))	
Chester, South Carolina)	

APPEARANCES

David Tillotson, Esq. on behalf of Chester Broadcasting Company, Inc. and James W. Shook, Esq. on behalf of the Mass Media Bureau, Federal Communications Commission.

SUMMARY DECISION OF ADMINISTRATIVE LAW JUDGE
JOHN M. FRYSIK

Issued: February 3, 1997

Released: February 5, 1997

Preliminary Statement

1. By Hearing Designation Order, DA 96-1251, released August 7, 1996 ("HDO"), the Assistant Chief, Audio Services Division, Mass Media Bureau, by delegated authority, designated for hearing the application of Chester Broadcasting, Inc. ("Chester"), licensee of AM station WGCD, Chester, South Carolina. The following issues were specified:

- (1) To determine whether Chester Broadcasting Company, Inc. has the capability and intent to expeditiously resume the broadcast operations of WGCD(AM), consistent with the Commission's Rules;
- (2) To determine whether Chester Broadcasting, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules; and
- (3) To determine, in light of the evidence adduced pursuant to the preceding issues, whether grant of the subject renewal of licensee application would serve the public interest, convenience and necessity.

The HDO further provided that, in the event that a grant of the renewal application would serve the public interest, convenience and necessity, the grant will be conditioned on the expeditious resumption of operation. (HDO at para. 5.) The HDO placed upon Chester both the burden of proceeding with the introduction of evidence and the burden of proof. (Id. at para. 7.)

2. Presently under consideration are a Motion for Summary Decision, filed January 10, 1997, by Chester, and comments in support thereof, filed January 24, 1997 by the Mass Media Bureau.

FINDINGS OF FACT

3. The HDO recited the following facts as the basis for the specification of issues in the this proceeding: WGCD(AM) suspended operations on July 31, 1993 when the station's general manager resigned and the licensee's principals claimed they were unable to manage the station. The licensee then reported that it placed the station on the market for sale, that it was following up on various leads, and that it would dissolve the corporation and surrender its license if these efforts were not successful by June 30, 1994. The efforts were not successful, but the licensee nevertheless filed the captioned application for license renewal in July, 1995. In an October 23, 1995 amendment to that application, Chester recited the history of its attempts to sell the station. Chester's last temporary authorization to remain silent expired March 11, 1996. On March 7, 1996, Chester requested permission to remain silent beyond this date, indicating that it continued "to work diligently to obtain a purchaser for the station and named several parties as having expressed interest in purchasing radio station WGCD for the agreed price."

4. As of August 2, 1996, no application for the assignment of the station's license had been filed. The Commission released the HDO on August 7, 1996.

5. On December 10, 1996, Chester requested suspension of the dates set forth in the Order, 96M-222, released September 19, 1996. Chester predicated this request on the Commission's decision in Southwestern Broadcasting Corp., FCC 96-443, released November 15, 1996, which directed the Bureau to expeditiously process applications filed by licensees of silent stations which had been designated for hearing.

6. By Order, FCC 96M-271, released December 17, 1996, Chester's Motion for Suspension of Hearing Dates was granted. The Order postponed the procedural schedule until after February 9, 1997, and cancelled the hearing date of January 6, 1997. The Order also stated that if WGCD(AM) failed to resume operations by February 8, 1997, its license would be terminated.

7. According to the instant motion, WGCD(AM) resumed regular broadcast operations with its licensed facilities on January 4, 1997, meeting the "minimum operating schedule" specified in Section 73.1740 of the Commission's rules. Chester further declares that it entered into a Time Brokerage Agreement ("TBA") with a prospective buyer, Frank Neely. Finally,

Chester avers that the TBA assures that WGCD(AM) will have sufficient revenue and programming to continue operating until consummation of the proposed sale of the station. Chester supports its allegations with a declaration from its president, William C. Stone, Jr.

CONCLUSIONS OF LAW

8. The Motion for Summary Decision will be granted and the issues will be resolved in Chester's favor. Pursuant to Section 1.251 of the Commission's Rules, in order to warrant summary decision a party must show that there is no genuine issue of material fact remaining for determination at the hearing. In order to sustain such a motion, it must be established that the truth is clear, that the basic facts are undisputed, and that the parties are not in disagreement regarding material factual inferences that may be properly drawn from such facts. Big Country Radio, Inc., 50 FCC 2d 967 (Rev. Bd. 1975). Chester has met this stringent test.

9. Issue (1) seeks to determine whether Chester has the capability and intent to expeditiously resume the broadcast operations of the station consistent with the Commission's Rules. Given that Chester has resumed broadcasting and has entered into a TBA with a proposed assignee of the WGCD(AM) license, it is concluded that Chester has the capability and intent to resume broadcasting. Issue (1) is resolved in Chester's favor.

10. Issue (2) seeks to determine whether Chester has violated Section 73.1740 and/or 73.1750 of the Commission's Rules. Pursuant to Section 73.1740, Chester was obligated to submit an informal written request to remain silent when it was unable to continue station operations due to circumstances beyond its control. Pursuant to Section 73.1750, Chester should have notified the Commission of permanent discontinuance of station operation and forwarded the station's license to the Commission for cancellation if Chester intended to permanently discontinue operation of WGCD(AM).

11. Chester contends that the Commission "deferred" its final Special Temporary Authorization ("STA") extension request of March 7, 1996, pending a decision in this case. Chester also argues that WGCD "has not been off the air without authority and, thus, has not violated Section 73.1740. The Bureau submits that the proper conclusion is that in the HDO the Commission denied Chester's last STA extension request because the continued failure to operate cannot be attributed to causes beyond the licensee's control. The Bureau's view is deemed correct. In any event, Chester has submitted no evidence regarding its compliance with Section 73.1740. Victorson Group, Inc., 6 FCC Rcd 1697, 1701 (Rev. Bd. 1991). Accordingly, it is concluded that Chester violated Section 73.1740. However the violation was of a relatively brief five month duration and does not impact adversely upon Chester's basic qualifications. Cf., Video Marketing Network, Inc., 10 FCC Rcd 7611, 7613 (MMB 1995).

12. Concerning Section 73.1750 of the Commission's Rules, Chester's continued requests for extensions of the original STA request to remain silent, its return to the air, and its entry into a TBA, indicate that Chester never intended to discontinue operation of WGCD(AM).

Furthermore, Chester's application for a renewal of license as opposed to turning in its license is indicative of its intent to resume broadcasting as soon as a buyer could be found. It therefore appears that Chester did not violate Section 73.1750 of the Rules. Therefore, issue (2) is resolved in Chester's favor.

13. Issue (3) seeks to determine whether Chester is qualified to be and remain the licensee of WGCD(AM). Chester has demonstrated through its resumption of broadcasting on (WGCD(AM), and its entering into an agreement with a third party to ensure continued broadcasting, that Chester is qualified to be and remain the licensee of WGCD(AM).

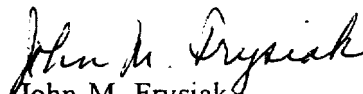
ULTIMATE CONCLUSIONS

14. In sum, it has been concluded that Chester has resumed broadcasting on WGCD(AM) and that its time brokerage agreement with a third party ensures continued broadcasting, that Chester did not violate Section 73.1750 of the Commission's Rules and that Chester did violate Section 73.1740(a)(4) of the Rules but the violation was of a relatively brief five month duration. It has been further concluded that Chester's rule violation is not disqualifying. It is, therefore, ultimately concluded that the public interest, convenience and necessity should be served by a grant of Chester's renewal application.

Accordingly, IT IS ORDERED that the Motion for Summary Decision, filed January 10, 1997, by Chester Broadcasting Company, Inc. IS GRANTED and Issues (1), (2) and (3) ARE RESOLVED in Chester's favor.

IT IS FURTHER ORDERED that unless an appeal from this Summary Decision is taken by a party, or it is reviewed by the Commission on its own motion in accordance with Sections 1.251(e) and 1.276 of the Rules, the above-captioned application of Chester Broadcasting Company, Inc. for station WGCD(AM), Chester, South Carolina IS GRANTED.¹

FEDERAL COMMUNICATIONS COMMISSION


John M. Frysiak
Administrative Law Judge

¹ In the event exceptions are not filed within 30 days after the release of this Summary Decision, and the Commission does not review the case on its own motion, this Summary Decision shall become effective 50 days after its public release, pursuant to 47 C.F.R. 1.276(d).